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There must come then greater standardization. "The principle of standardization has four main applications or phases in the making of statute law: conformity to undisputed scientific data and conclusions: the working out of juristic principles, the observance of an intelligible method in making determinations, and the avoidance of excessive or purposeless instability of policy."

The author seeks to prove that there exist "principles of legislation apart from recognized doctrines of constitutional law."

The construction of law by the courts is "essentially supplemental legislation." Such construction is necessary and desirable, and "there has been on the whole a very well defined judicial attitude towards questions of construction." Faulty as our court decisions may have been at times, "the courts represent our best in government while our legislatures do not."

European legislation is superior to ours, largely, the author believes, because "under every system, except the American, the executive government has a practical monopoly of the legislative initiative." We would do well to modify our practices. We are making some attempts by "(1) the preparation of bills by special commissions; (2) the delegation of power to administrative commissions; (3) the organization of drafting bureaus, and (4) the codification of standing clauses."

Some of our trouble comes from the fact that the teaching of law is on the case method which is professionally advantageous but socially disastrous. The problems to be met by law are social, and the teaching should be modified. The determination of policies is a political matter. It will be advantageous to the people as well as to the government when the drawing of legislation receives more attention.

In this cursory and unsatisfactory fashion I have sought to sketch the contents of the book. Professor Freund is exceedingly careful and eminently fair. Though he has criticized the courts at times, he has sought to understand their attitude, and all his criticism is based on specific cases. In each topic treated there is constant citation of cases. Personally I am greatly indebted to the author for some of his suggestions, and I shall have opportunity to discuss his ideas in the classroom. The reviewer is not a lawyer, but for many years he has been in close contact with problems of legislation, and has ever tried his hand at drafting laws. He feels qualified (in a measure) to judge the author's work. It will be read with profit by lawyers and I hope by many legislators who are not lawyers. The latter will not find the reading easy—it will be profitable.

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ROMAN LAW IN THE MODERN WORLD. By Charles Phineas Sherman. 3 vols. Boston; The Boston Book Co., 1917.

The three well-printed and well-bound volumes in which Professor Sherman has presented his work raise expectations that are not satisfied.

He has undertaken in the first volume to present a history of the Roman law from its origins to its codification in Justinian's time, then through its post-Justinian phases and finally in its ramification throughout the laws of the modern world. It purports to be written for "the general reader, the non-professional student, the law student, and the law teacher." It would require genius of the highest order to acceptably complete such an undertaking. Professor Sherman's purpose is obvious. He is a devotee of the Roman Law; he believes with a firm faith that it is the fount and origin of most of what is good in the law of the world, and that it has supplanted or should supplant all other systems of law because of its wonderful perfection. One may admit much of Professor Sherman's contention without subscribing to all of his doctrine. It is generally conceded that Roman Law should be studied, and that its influence and scientific formulation and excellence are great. But the scientific investigator must hold his enthusiasm in check lest his judgment be too much influenced by his feelings. Objectivity of treatment is prime-essential in the work of the scholar and teacher, and what shall one say to the statement on the very first page that "from Rome we have inherited our conceptions of law, the State and the family," more especially when it is supported by no other reference than to Chamberlain's "Foundations of the Nineteenth Century," a work which Professor Sherman's footnote tells us "has already gone through eight editions," and presumably therefore is worth quoting as authoritative. Chamberlain is a brilliant, untrustworthy polemical writer, whose unfounded and unprovable theories and embittered partisanship do not entitle him to be cited as an authority by a scientific scholar, more especially when his statement is as sweeping as the one cited. If we have inherited these three conceptions from Rome, Professor Sherman should have cited the opinions of scholars of established reputation.

Professor Sherman's devotion to the Roman law colors much of his thought. He strongly favors codification of our law which he considers inferior to other modern legal systems that have followed the Roman precedent. This is debatable ground. He seems to think that the study of the Roman law is needed to improve the ethical quality of our own juristic thought and practice. "There is one study," he says, "which combines ethical and intellectual advantages—Roman law." "Only one?" we ask. We may agree with him as to the practical, philosophical and professional benefit of study of the Roman law, but would not the study of other systems of jurisprudence, more particularly the study of comparative jurisprudence have a similar value? To help us escape from provincialism in thought, we must acquire knowledge of other peoples and of their systems of law. It is not because it is Roman law, but because it is not our law, that its study is valuable. Professor Sherman actually speaks of the "world mission" of the Roman law and in fact tells us what it is (Secs. 12-14). "World missions" may exist for political propagandists or for religious enthusiasts, but they have no place in the work of scientific investigators except as ascertained phenomena, which are themselves made the subject of investigation. World mission of the Roman law is a theory and not a fact—

a theory based upon no ascertainable proofs. He says (Sec. 14): "to Rome's influence in the modern world is due in no small measure the acknowledged fact that Europe and America are today for intellectual and spiritual purposes one great federation, as Matthew Arnold said." To which one is tempted to reply that if Matthew Arnold found Europe and America thus federated, it was not through the cement of Romanism, but of Hellenism and Hebraism, the two forces which to him were the august, the invaluable contributions to human development. (M. Arnold: *Culture & Anarchy*, Ed. 1883, p. 120.)

Does similarity of principle or practice in law denote similarity of origin or imply discipleship? *Post hoc propter hoc* is a dangerous argument. The science of comparative jurisprudence has demonstrated at least this, that similar conditions of life, occupation, climate and civilization will tend to develop similar legal ideas and forms. A pioneer work, such as that of Post: *Grundriss der Ethnologischen Jurisprudenz* furnishes much material for thought on this subject. It is really not at all impossible that the English may have developed the notion of the jury without the aid of the Roman *judices*, and the contrary has not yet been established with such certainty that it can be made a dogma of juristic faith. But Professor Sherman assures us (Sec. 403), that: "the fundamental conceptions of Habeas Corpus and Trial by Jury, as well as many principles of the law of torts are of Roman origin." And then he adds: "that dearly cherished principle and familiar palladium of English and American liberty 'every man's house is his castle' is not of Anglo-Saxon but of Roman origin." Why not add by way of citation Deuteronomy 24: 10, 11, as additional proof of its Roman origin! In connection with this theory of the universal superiority and domination of the Roman law, articles such as that of Mr. R. W. Lee on "The Civil Law and the Common Law," in 14 Michigan Law Review 89, are interesting reading.

For the purpose of showing the influence of Roman law on the subject of imprisonment for debt (abolished at Rome by Constantine—see Sec. 716), our author states that "imprisonment for debt was universally allowed, particularly in the English common law," and abolished during the latter half of the nineteenth century. But does not Blackstone, our author's favorite authority, refute this very statement (3 Bla. 281)? Is it absolutely certain that the common law doctrine of consideration is "an evolution of the Roman law conception of *causa*?" (Sec. 750.) Is it certain that the Law Merchant and Admiralty law are of Roman origin. It has been said that the Jews and Moslems, especially the Moors, had some part in its creation.

If the Roman law was dominant in Britain for five hundred years before the Saxon Conquest, how is it that it disappeared almost without a trace during the following half millenium? And why was this disappearance unfavorable to the development of Saxon English law? (Sec. 367.)

Is not the fault of this work the too great insistence on the theory that the Roman is *the one* great system of law just as the opponents of this view would insist that the Anglo-Saxon is *the* system? Most law is tough and vital. It develops out of the natural conditions of the life of the

people, is influenced by conditions of climate, habitat and local needs and aims. These change but slowly and even foreign conquest does not materially affect them. As a rule, it is more likely that the law of the land conquers its conquerors than that the latter introduce and make dominant a new system. It is perhaps only when a virgin soil is settled by newcomers that the old law is carried over into it, and even then, without the presence of native human factors to influence its development, the mere physical conditions of the new land change the old law into conformity to a type of what it would have been if it had always been native to the new soil.

The fact that Roman law is a great system of tremendous importance in the history of the world may be conceded without making of it a fetish to be worshipped for all sorts of undemonstrated and perhaps undemonstrable perfections. Scholarship should not become the sponsor for a mythological concept of a divinely inspired Roman law which will dominate the world. In so far as the book will be read by the "general reader and non-professional student" it may lead to fundamental misconceptions. The professional student and the law teacher will probably make reasonable allowance for the author's enthusiastic devotion to his subject, and give him credit for the assistance which he has rendered to the inquirer. The impression that the reviewer received was that the work did not draw sufficiently on the available material prepared by English and Continental scholarship, although much of it is referred to in the bibliography.

Professor Sherman is working in a field in which he has unfortunately too few co-workers. His work will be valuable as an incentive to others. In spite of a certain amount of critical resentment, we must receive the book as a contribution to a field too little known, and though it may spread some error we hope that it may do much good. The second half of the first volume, pointing out in detail the spheres of influence which Roman law has acquired in the modern world through its peaceful penetration of many foreign systems, is well supplemented by the subject guides in the third volume. Professor Sherman deserves thanks for his collation of authorities under appropriate topical headings, an arrangement that commends itself as very useful to the investigator. And after all, that is what our author really set out to do, *i. e.*, to show the pathway of "Roman Law in the Modern World." The criticism which is here offered is to the many *dicta* which, not being essential to the development of his thesis, might well have been omitted, thereby removing a possible source of error out of the way of the too-trustful inquirer.

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MENTAL CONFLICTS AND MISCONDUCT. By William Healy. Pp. xi, 330. Boston: Little, Brown & Co., 1917.

This volume is devoted to an exposition of the relation of misconduct to underlying psychological factors, the results of previous impressions (insults) to the mental system of the individual affected.